

SHOULD TRADE BE CONSIDERED A HUMAN RIGHT?



'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'

– The United Nations' Universal Declaration of Human Rights

The *United Nations' Universal Declaration of Human Rights* celebrates its 60th anniversary on 10 December 2008. This declaration has served as a foundation of international law in the intervening years and also holds the record as the most translated document in the world; it is available in over 360 languages. One of the main areas of focus of the declaration is on economic rights, which has been further detailed in the UN's *International Covenant on Economic, Social and Cultural Rights*. Ensuring the right to work is a central tenant of both these documents, but never do they explicitly mention trade as a mechanism for ensuring this fundamental right. And yet trade plays a key role in promoting the economic growth and stability that jobs and workers rely on. The Trade and Poverty in Latin America (COPLA) programme has therefore taken this anniversary as an opportunity to pose a question to a diverse group of experts: **'Should trade be considered a human right?'**



Trade and Poverty in Latin America

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*This document represents a selection of expert responses to the question, **Should trade be considered a human right?***

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FOR

Economics and human rights: Narrowing the gap

by Sarah Hague, Save the Children UK

Trade, like income, has little intrinsic value to human well-being. But it is instrumental in achieving human rights, as it creates the means for providing additional resources; both at the individual level (through employment and expanded markets) and at the country level (through national expenditure and growth), which can then be harnessed to deliver rights. It is also worth noting that the relationship between trade and human rights is two-way; the realisation of rights can lead to increases in trade, and other aspects of development, as people's human capital accumulates.

But human rights covenants focus on the assurance of people's actual standard of living rather than defining the process that achieves it. Specifying each element of the economic and social processes that might deliver an adequate standard of living for all would be impractical and is impossible given substantially varying country circumstances.

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AGAINST

Making trade work for development: Rights are the wrong approach

by Mareike Meyn, ODI

The suggestion that trade should be considered a human right is interesting, but it needs to be developed much further. In particular it is necessary to address two questions: What favourable features of trade would considering it a human right highlight? And is it possible to identify compliant and non-compliant behaviour?

One argument for considering trade as a human right is that trade is an instrument for economic growth, and job creation should occur under 'just and favourable conditions' – just as it is foreseen for work. But what are 'just and favourable' conditions? It may be related to wage levels, but the UN Declaration is silent here, possibly because there may be a trade-off with the volume of employment. The debate on this topic (for example around a minimum wage) is well known. The same applies to international trade – it is disputed among developing countries whether their compliance with basic international labour standards is

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But this often leads to a tension in policy debates between those advocating for the realisation of universal human rights and those focusing on the policy practicalities of development. In the rights arena, often too little consideration is given to the practicalities of their realisation. And in economics, generally too little attention is given to thinking policies through from a human rights perspective.

Perhaps the practicalities of policy analysis and design cloud the purity of the human rights debate. Or perhaps the end-game focus of the rights advocate oversimplifies economic reality.

But to bridge the gap between the two it is necessary to understand how rights might be achieved in practice. This is particularly important when considering trade because its impact on human rights will depend substantially on the nature of the resources it creates and their distribution. Trade that does not benefit excluded or poorest groups will do little to improve their rights and may even isolate them further. Ideally, trade should create sustainable benefits that expand, either directly or indirectly, the opportunities that these groups face.

But while international and domestic trade may in general create overall benefits by expanding markets and creating growth, reforms to trade policy will often create trade-offs. For example, the reduction of tariffs, while broadening trade opportunities and growth, may hurt some domestic producers in the short-term who were previously protected. The benefits of facilitating or liberalising trade are also more likely to accrue to those who are not the poorest or most excluded. Women are usually more likely to be poor than men; but men generally have better access to resources (such as land and credit) that can enable them to take greater advantage of trade opportunities. As a result, increases in trade may cause inequality to rise as poorer groups are left behind, which must be a concern to policy-makers particularly as inequality can act as a brake on future economic development.

Therefore we cannot assume that trade promotion, or indeed any strategy to increase economic growth, will deliver commensurate reductions in poverty and realise human rights. And nor can we define a precise blueprint for how trade

will always lead to the achievement of human rights, given variations in country circumstances and characteristics. To consider trade a human right therefore seems to miss these complexities.

However, this debate should not end there. Because trade is instrumental to the progressive realisation of human rights, and because of the reverse causality between the two, the rights and the economic agendas must be dramatically integrated. The distributional impact of trade policies and trends must be analysed using a human rights approach. This should be done through detailed, country-specific impact analysis that assesses the capacity of poor people to engage with and benefit from trade opportunities. Complementary policies that enhance positive impacts or mitigate negative ones, such as improvements to public financial management or childcare programmes to support women in the workforce, should also be considered.

The human rights debate must recognise the need to consider policy choices and their varied trade-offs; and the economic policy debate must recognise the need to consider fully the human rights impact of such choices.

Protecting access to markets

by Soraya Fernandez, Instituto Boliviano de Comercio Exterior

Although trade does not currently enjoy the status of a human right, it is a tool of the market that has, historically, contributed to the wellbeing of humankind. In this way, bringing goods to market is a practice inherent to human nature that should not be obstructed. The lack of the concept of a 'right to trade' impedes individuals and/ or firms from exercising their civil rights and the right to be free from discrimination in access to national and international markets.

If the concept of the right to trade were to exist, in the presence of government measures that prohibit trade (such as those implemented in Argentina and Bolivia in 2008), economic agents could appeal for legal protection for infringements on their constitutional right to practice trade. These bans on trade can generate economic damages of great magnitude. For example, bans on goods for export generate breaches of international con-

tracts of purchase and sale of merchandise, negatively impacting the economy.

This also can affect job creation for thousands of people who are heads of household that are responsible for the food security, and insecurity, of their dependents. An attack on the right to work is worrisome, given that this right is contained within the Universal Declaration of Human Rights. This also affects the right of entrepreneurs to invest (a right which is usually contained within the political constitutions in developing states).

In general, the lack of a concept of the right to trade has provided the opportunity for governments to infringe on the right to conduct business. This negatively affects all economic agents that participate in the chain of production. For example, it can potentially result in direct and indirect losses in the market, production and employment due to the multiplicative effects of being operators of foreign trade, producers of primary materials and inputs, transporters of national and international cargo, intermediary and end consumers, and related services such as vendors of food and clothing.

Banning the trade of a good or service might also lead to illegal trade (contraband) given that the producing firm must operate in order to comply with its business contracts, and, on the other hand, in order to be profitable and avoid bankruptcy and layoffs. It is also important to consider that all countries, without exception, practice international trade, including those socialist countries at the margin of their political ideology. This is the case in Venezuela, given that their principal market for trade is the United States. These countries protect their markets such that political-trade relations do not interfere in real terms.

The lack of a concept of the 'right to trade' prevents ordinary individuals (independent of their social condition, race, religion, colour or ideological precepts) from exercising their civil right to be free from discrimination in their access to markets. This type of right would provide a legal philosophical framework which could be used to urge states to guarantee the right to trade goods and services. The existence of a concept of the right to trade would require states to compensate actors for the economic and non-economic problems that emerge from trade policies that adversely affect the right to trade.

WRONG APPROACH... (from pg 1) desirable or whether it will diminish their competitive advantage (cheap labour). This may explain, for example, why the vast majority of developing countries reject the idea of fixing labour and environmental standards at the World Trade Organization (WTO). We should certainly support developing countries' attempts to implement decent labour standards, but, when pushing first-world regulations in a third-world context, we must be aware of possible negative consequences.

The focus of this human right appears to be on international trade – but this is only one part of 'trade'; any human right must also consider domestic markets. Let us assume Country X is a developing country with a skewed income distribution with most of its workers receiving only a small share of added value. It exports a good to developed Country Y where it is mainly consumed by lower income groups. Why is justice enhanced by making the (poor) Country Y consumers pay more when this will simply accrue to the rich in the developing Country X – with no trickle-down effects for the poor?

If the intention of positioning 'international trade as a human right' is to make trade 'fairer', there are several problems. Most economists would argue that trade is developmental because it enables countries to exploit their comparative advantages, to benefit from competitive inputs and to grow. Though this liberal approach towards trade has been disputed, it is even more disputed what can be understood under 'fair' trade.

Consider the example of subsidies: they distort prices, and thus competitiveness and trade flows, because uncompetitive producers get an incentive to produce and export their products. The famous examples of US cotton resulting in low world market prices for West African farmers, and EU chicken exports into West Africa making domestic production unviable, can be cited here. On the other hand, net food importing developing countries depend on cheap (subsidised) imports to feed their poor

consumers. It may be poverty alleviating and pro-development to favour the West African chicken producers over consumers, but it may not; how would a 'human right' distinguish between the two possible situations?

Protection measures in developed countries are another area where it is difficult to establish a moral high ground. On one hand, poor countries in Latin America and Asia suffer from EU market protection for selected agricultural products, like bananas, rice or sugar. On the other hand, most African, Caribbean and Pacific countries enjoy preferential access in the EU market for these goods. The current trade regime produces winners and losers but its reform would likely just produce different ones.

What we need is a discussion about the winners and losers of the current trade regimes and what reforms that create as many winners as possible should look like. Unless further elaborated and nuanced, there appears to be a danger that the bald concept of 'trade as a human right' will obscure these trade-offs and serve to undermine rather than promote the task of helping the poor to benefit more than they do at present from trade.

Trade is not a human right, it is merely a tool

by Mariano Fernandez Valle, CIPPEC

It would be a conceptual error to believe that the positive effects of trade could lead to the consecration of 'trade' as a human right. Furthermore, crystallising 'trade' as a human right could obstruct any positive effects.

Trade should only be understood as a tool that is at the service of the state's obligation to guarantee human rights within its jurisdiction. This tool, to date, has been brutally ineffective: it has contributed to the destruction of the environment, through the occupation of lands, deforestation and the depletion of non-renewable resources, which will have an indirect impact on all people, but will have a direct and immediate impact that will target the least privileged communities (like people living in poverty and indigenous communities). It has caused the exploitation of labour of different social groups, who are responsible for producing goods, services and products at a much lower cost than the sale price. It has commercialised the human body (the clearest example of this

can be seen in the sexual trade and exploitation of women and children). It has increased the gap between the wealthy and the poor. It has normalised tastes/preferences and certain areas of inclusion/exclusion based on criteria associated with classism, racism, xenophobia, heteronormativity and mysogyny.

Thus, the current debate should not be centred on whether we should con-

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Of course we can argue that trade should be 'fair' in a sense that it enables producers to earn a decent living (which comes back to the concept of 'work as a human right'). However, we also need to acknowledge that any 'fair trade scheme' creates outsiders who cannot qualify for the scheme. However, these producers might still create positive development impetuses, such as enabling workers to invest in education and health services.



Trade and Poverty in Latin America

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sider trade as a human right, but rather on whether it is possible to think about an idea of trade that does not violate human rights and allows for improvement in indices of satisfaction with rights, in a way which is comprehensive, interdependent and not limited exclusively to, for example, job creation. In this way, it is not through the consecration of trade as a human right that we could achieve a human and egalitarian approach at trade that could be universalised. On the contrary, the best path for this is the progressive analysis of the relationship between existing rights and the trade policies that are designed and implemented. In other words, the existing political human rights programme should be converted into limits that are increasingly clear and precise in trade policies. It is not human rights that should be subordinated to trade policy, but precisely the reverse.

The consequences of traditional forms of trade provide ample fodder for debate in the area of human rights. Therefore, we are morally obligated to first discuss how to resolve and repair all the human rights violations that are caused by the current form of regulating (or failing to regulate) trade in our states. Afterwards, long after, perhaps it will be useful to discuss whether to bless trade itself with the status of a human right.

If trade should be seen in any way, it is as a tool (among others that are available) to increase and improve egalitarian access to the exercise of basic rights. Within a political programme associated with the condemnation of injustice and inequality, trade has to operate as an instrument to prioritise achieving this goal above others (or, one could say, exclusively). It is not important to perceive trade as a human right, but rather to focus the discussion on whether any form of trade is compatible with human rights and, taking this point further, if any form of trade is a suitable tool – that could be proposed, designed, implemented and evaluated with objective parameters and in a given amount of time – in order to improve the situation of the worst placed social groups. This final point would also require the satisfaction of

very basic criteria: the adequate participation of these groups in the decision making process and the control of trade, together with multiple and non-hegemonic ideas of trade, progress and development.

Considering trade itself to be a human right significantly reduces the possibility of a democratic debate regarding its reach, limits, advisability, the forms that it should adopt, the markets and products in which it should be conducted.

Precisely because rights are trump cards for this type of debate and because these debates are central and permanent in the area of trade, “trade” per se, taken simply or in general terms, should not be recognised as a right. Thus, it is reasonable to believe that the consecration of trade as a human right would not improve the opportunities of the most underprivileged groups, but rather would provide more and better judicial tools and veto powers to those who administer economic power at both the local and international level (large multinational companies, economic groups, etc.), that are, at the same time, those who have the greatest capacity to utilise the judicial mechanisms ratified in the majority of our states in order to protect human rights. The incorporation of the supposed right to trade would affect efforts made by a large part of academic streams of thought that seek to reduce the incidence and exaggerated protection of certain rights, such as private property or the freedom to enter into contracts and conduct business. At the same time, this would transfer the power of different business sectors to Human Rights Systems that, even with their shortcomings, have attempted to maintain a distance from them. It would invite powerful sectors to take advantage of judicial tools that have been created for the weakest sectors of society.

States have to keep their hands free from powerful sectors and tied to excluded sectors, in order to develop a different range of policies with the objective of guaranteeing human rights. In many cases, guaranteeing human rights will require betting on trade policies, correcting them, modifying them, transforming them, or even abolishing them.

Summary of arguments

Arguments for:

- Making trade a human right would ensure that citizens would have legal recourse against governments that ban or restrict trade opportunities.
- Trade can lead to economic growth, which has the potential to increase access to other rights like education and health.
- The lack of a concept of the ‘right to trade’ prevents ordinary individuals (independent of their social condition, race, religion, colour or ideological precepts) from exercising their civil right to be free from discrimination in their access to markets.

Arguments against:

- When looking at trade as a human right, one must not forget the distribution of wealth within trading countries. A simple right to trade doesn’t necessarily guarantee the benefits of trade will go to those who need it most.
- Trade is undertaken by companies not individuals and in that sense cannot be a *human* right.
- Trade has historically undermined and destroyed rights – the question should be how to trade responsibly.